

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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CARMEN MAIDANA,

Plaintiffs,
- against -

LA ESQUINA CRIOLLA RESTAURANT INC.,
ABAD BALLINAS, as Officer and Manager, and
MARIO CIVELLI, as Owner and Manager,

Defendants.

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AMON, Chief United States District Judge.

NOT FOR PUBLICATION
MEMORANDUM & ORDER
11-CV-02606 (CBA) (CLP)

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D.N.Y.
★ JAN 4 - 2013 ★

BROOKLYN OFFICE

On May 31, 2011, plaintiff Carmen Maidana commenced this action against defendant La Esquina Criolla Restaurant Inc. ("La Esquina"), alleging violations of the Fair Labor Standards Act ("FLSA"), 29 U.S.C. § 201 et seq., and the New York Labor Law ("NYLL") §§ 190 et seq. and 650 et seq. On August 9, 2011, Maidana filed an amended complaint, adding defendants Abad Ballinas, as Officer and Manager of La Esquina, and Mario Civelli, as Owner and Manager of La Esquina. (DE #5.) On July 13, 2012, defendant Civelli moved for partial summary judgment, seeking to dismiss the claims against him on the grounds that he does not meet the "economic reality" test required to hold him personally liable. The Court referred the matter to Magistrate Judge Cheryl L. Pollak, who issued a Report and Recommendation ("R&R") on November 5, 2012. The R&R recommends that the Court deny Civelli's motion for partial summary judgment.

Neither party has objected to the R&R, and the time for doing so has passed. When deciding whether to adopt a R&R, a district court "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1)(C). To accept those portions of the R&R to which no timely objection has been made, "a district

court need only satisfy itself that there is no clear error on the face of the record.” Jarvis v. N. Am. Globex Fund, L.P., 823 F. Supp. 2d 161, 163 (E.D.N.Y. 2011) (internal quotation marks and citation omitted). The Court has reviewed the record and, finding no clear error, hereby adopts Magistrate Judge Pollak’s R&R as the opinion of the Court.

Accordingly, the Court denies Civelli’s motion for partial summary judgment.

SO ORDERED.

Dated: Brooklyn, New York
January 3, 2013


s/C¹Carol Bagley Amon
Carol Bagley Amon
Chief United States District Judge